

#10 1/2 Supply Reg  
w/attach  
OFFICE  
12/01/01

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Better *et al.*

Appl. No. 09/610,838

Filed: July 6, 2000

For: **Fusion Proteins And  
Polynucleotides Encoding Gelonin  
Sequences**

Art Unit: 1643

Examiner: A. Salimi

Atty. Docket: 0610.099000A/MAC

**Supplemental Reply Under 37 C.F.R. § 1.111**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Further to the first Supplemental Amendment and Reply filed on November 20, 2001, Applicants submit the following documents and remarks.

## Remarks

On November 20, 2001, Applicants faxed a copy of a Certificate under 37 C.F.R. § 3.73(b) to the United States Patent and Trademark Office. However, Applicants inadvertently did not attach copies of certain of the assignment documents that were referred to therein. Accordingly, attached herewith is another copy of the Certificate under 37 C.F.R. § 3.73(b), with copies of certain of the assignment documents as indicated therein.

In view of the discussion above it is believed that the present application is now in condition for immediate allowance. Early notice to this effect is earnestly solicited. If the Examiner believes, for any reason, that personal communication will expedite prosecution of

- 2 -

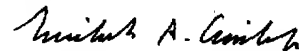
Better *et al.*  
Appl. No. 09/610,838

this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Michele A. Cimbala  
Attorney for Applicants  
Registration No. 33,851

Date: 11/21/01

1100 New York Avenue, Suite 600  
Washington, D.C. 20005-3934  
(202) 371-2600

**Certification of Facsimile Transmission**

I hereby certify that this paper is being facsimile transmitted  
to the Patent and Trademark Office on the date shown below.

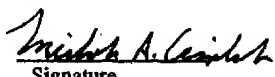


Michele A. Cimbala, Registration No. 33, 851

Date: 11/21/01

099000A.re1supp2

09/21/01 09:21:01

Form PTO-1595 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)	<b>RECORDATION FORM COVER SHEET</b> <b>PATENTS ONLY</b>	U.S. Department of Commerce Patent and Trademark Office
To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.		
1. Name of conveying party(ies):  XOMA Corporation (merged into) XOMA Arizona, Inc. (changed to) XOMA Corporation (changed to)	2. Name and address of receiving party(ies):  Name: XOMA Ltd.  Internal Address:  Street Address: Clarendon House 2 Church Street  City: Hamilton      State:      Zip Code: HM11  Country: Bermuda  Additional name(s) & address(es) attached? <input type="checkbox"/> yes <input type="checkbox"/> no	
Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no		
3. Nature of Conveyance:  <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Other <u>Merger and Change of Name</u>  Execution Date: (1) December 12, 1998 (2) December 29, 1998 (3) December 29, 1998		
4. Application number(s) or patent number(s):  If this document is being filed together with a new application, the execution date of the application is _____		
A. Patent Application No(s). 07/787,567 08/064,691 08/839,765 09/136,389 09/610,838 09/711,485	B. Patent No(s). 5,376,546 5,416,202 5,621,083 5,744,580 5,756,699 5,837,491 6,146,850	
Additional numbers attached? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no		
5. Name and address of party to whom correspondence concerning document should be mailed:  Name: Sterne, Kessler, Goldstein & Fox P.L.L.C.  Internal Address: c/o  Street Address:    1100 New York Ave., N.W. Suite 600  City: Washington    State: D.C.    Zip Code: 20005-3934	6. Total number of applications and patents involved: <u>13</u>  7. Total fee (37 C.F.R. § 3.41).....\$ <u>560.00</u>  <input checked="" type="checkbox"/> Enclosed  <input type="checkbox"/> Authorized to be charged to Deposit Account  8. Deposit Account Number:  19-0036  (Attach duplicate copy of this page if paying by deposit account)	
DO NOT USE THIS SPACE		
9. Statement and signature. <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i>		
<u>Michele A. Cimballa</u> Name of Person Signing Registration No. <b>73851</b>	 Signature	<u>11/20/01</u> Date
Total number of pages including cover sheet, attachments and document <u>7</u>		
Mail documents to be recorded with required cover sheet information to: Commissioner of Patents and Trademarks, Box Assignments Washington, D.C. 20231		

# STATE OF ARIZONA



## Office of the CORPORATION COMMISSION

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I, BRIAN C. MCNEIL, EXECUTIVE SECRETARY OF THE ARIZONA CORPORATION COMMISSION, DO HEREBY CERTIFY THAT THE RECORDS IN THIS OFFICE SHOW THAT ON THE 12<sup>TH</sup> DAY OF DECEMBER, 1998 XOMA CORPORATION MERGED FROM A 'NO RECORD' TO XOMA ARIZONA, INC. AND ON THIS SAME DATE, CHANGED THE NAME OF THE CORPORATION TO XOMA CORPORATION. I FURTHER CERTIFY THAT ON THE 6TH DAY OF JUNE, 1999 XOMA CORPORATION CHANGED THE NAME OF THE CORPORATION TO XOMA, LTD, AND DOMESTICATED TO BERMUDA. XOMA, LTD. IS THE SURVIVING CORPORATION, AS PROVIDED BY LAW.

IN WITNESS WHEREOF, I have hereunto  
set my hand and affixed the official  
seal of the Arizona Corporation  
Commission. Done at Phoenix, the  
Capital, this

29TH day of MAY

2001, A.D.



*Brian C. McNeil*  
EXECUTIVE SECRETARY

BY *Liquia Agone*



Registration No. EC25732



BERMUDA

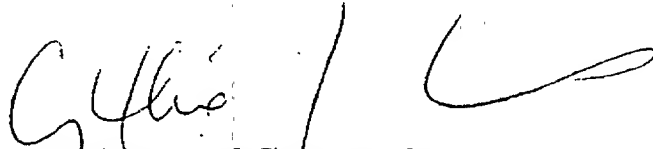
**CERTIFICATE OF CONTINUANCE**

I hereby in accordance with section 132C(4)(d) of *the Companies Act 1981* issue this Certificate of Continuance and do certify that on the **31st** day of **December, 1998**

**XOMA Ltd.**

was registered by me in the Register maintained by me under the provisions of the said section and that the status of the said company is that of an exempted company.

Given under my hand and the Seal of  
the REGISTRAR OF COMPANIES  
this 14th day of **January, 1999.**

  
for Registrar of Companies



**BERMUDA  
THE COMPANIES ACT 1981**

**MEMORANDUM OF CONTINUANCE OF  
COMPANY LIMITED BY SHARES  
(Section 132C(2))**

**MEMORANDUM OF CONTINUANCE  
OF  
XOMA Ltd.  
(hereinafter referred to as the "Company")**

1. The liability of the members of the Company is limited to the amount (if any) for the time being unpaid on the shares respectively held by them.
2. The Company is an exempted company as defined by the Companies Act 1981.
3. The authorised share capital of the Company is US\$85,000 divided into 70,000,000 Common Shares of par value US\$.0005 each and 1,000,000 Preference Shares of par value US\$.05 each. The minimum subscribed share capital of the Company is US\$12,000.
4. The Company shall not have power to hold land situated in Bermuda.
5. Details of Incorporation:

The Company was incorporated under the name "XOMA Arizona, Inc." in the State of Arizona, U.S.A. on November 10, 1998, as a wholly owned subsidiary of Xoma Corporation, a corporation which was incorporated in the State of Delaware, U.S.A. on February 24, 1981. On December 29, 1998, Xoma Corporation merged with and into the Company, which thereby changed its name to "XOMA Corporation".

6. The objects of the Company from the date of continuance are:
  - (i) to create, develop or otherwise acquire and to hold, sell, dispose of, manage, license and otherwise deal in and/or with products and processes of all kinds whatsoever;

006108330-0716500

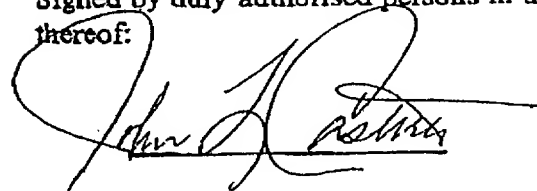
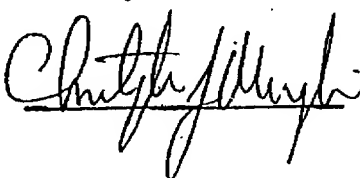
- (ii) to create, develop or otherwise acquire and to hold, sell, dispose of, manage, license and otherwise deal in and/or with patents, patent applications, know how, trade secrets, trade names, trademarks and trademark applications, service marks and service mark applications, copyrights and copyright applications, computer software, tangible and intangible personal property and forms of intellectual property of all kinds whatsoever;
- (iii) to develop, operate, advise or act as technical consultants with respect to life sciences, pharmaceutical products and processes or intellectual property of all kinds whatsoever; and
- (iv) packaging of goods of all kinds;
- (v) buying, selling and dealing in goods of all kinds;
- (vi) designing and manufacturing of goods of all kinds;
- (vii) mining and quarrying and exploration for metals, minerals, fossil fuels and precious stones of all kinds and their preparation for sale or use;
- (viii) exploring for, the drilling for, the moving, transporting and re-finishing petroleum and hydro carbon products including oil and oil products;
- (ix) scientific research including the improvement, discovery and development of processes, inventions, patents and designs and the construction, maintenance and operation of laboratories and research centres;
- (x) land, sea and air undertakings including the land, ship and air carriage of passengers, mails and goods of all kinds;
- (xi) ships and aircraft owners, managers, operators, agents, builders and repairers;
- (xii) acquiring, owning, selling, chartering, repairing or dealing in ships and aircraft;
- (xiii) travel agents, freight contractors and forwarding agents;
- (xiv) dock owners, wharfingers, warehousemen;
- (xv) ship chandlers and dealing in rope, canvas oil and ship stores of all kinds;
- (xvi) all forms of engineering;
- (xvii) farmers, livestock breeders and keepers, graziers, butchers, tanners and processors of and dealers in all kinds of live and dead stock, wool, hides, tallow, grain, vegetables and other produce;




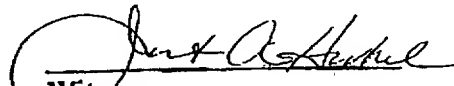
- (xviii) acquiring by purchase or otherwise and holding as an investment inventions, patents, trade marks, trade names, trade secrets, designs and the like;
- (xix) buying, selling, hiring, letting and dealing in conveyances of any sort; and
- (xx) employing, providing, hiring out and acting as agent for artists, actors, entertainers of all sorts, authors, composers, producers, engineers and experts or specialists of any kind.
- (xxi) to acquire by purchase or otherwise hold, sell, dispose of and deal in real property situated outside Bermuda and in personal property of all kinds wheresoever situated.
- (xxii) to enter into any guarantee, contract of indemnity or suretyship and to assure, support or secure with or without consideration or benefit the performance of any obligations of any person or persons and to guarantee the fidelity of individuals filling or about to fill situations of trust or confidence.

7. From the date of continuance the Company shall, pursuant to Section 42 of The Companies Act 1981, have the power to issue preference shares which are, at the option of the holder, liable to be redeemed.

Signed by duly authorised persons in the presence of at least one witness attesting the signature thereof:

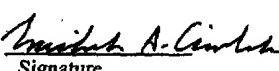
  


  
Witness

  
Witness

Dated this 29<sup>th</sup> day of December, 1998

**NOT FOR RECORDATION**  
*Copies of Item 5 from 3.73(b)*

Form PTO-1595 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)	<b>RECORDATION FORM COVER SHEET PATENTS ONLY</b>	U.S. Department of Commerce Patent and Trademark Office
To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.		
1. Name of conveying party(ies):  XOMA Ltd.  Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no	2. Name and address of receiving party(ies):  Name: XOMA Technology Ltd.  Internal Address:  Street Address: Clarendon House 2 Church Street  City: Hamilton      State:      Zip Code: HM11  Country: Bermuda  Additional name(s) & address(es) attached? <input type="checkbox"/> yes <input type="checkbox"/> no	
3. Nature of Conveyance:  <div style="display: flex; justify-content: space-between;"> <span><input checked="" type="checkbox"/> Assignment</span> <span><input type="checkbox"/> Merger</span> </div> <div style="display: flex; justify-content: space-between;"> <span><input type="checkbox"/> Security Agreement</span> <span><input type="checkbox"/> Change of Name</span> </div> <div style="display: flex; justify-content: space-between;"> <span><input type="checkbox"/> Other _____</span> </div> Execution Date: October 22, 1999		
4. Application number(s) or patent number(s):  If this document is being filed together with a new application, the execution date of the application is _____		
A. Patent Application No(s). 07/787,567 08/064,691 08/839,765 09/136,389 09/610,838 09/711,485	B. Patent No(s). 5,376,546 5,416,202 5,621,083 5,744,580 5,756,699 5,837,491 6,146,850	
Additional numbers attached? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no		
5. Name and address of party to whom correspondence concerning document should be mailed:  Name: Sterne, Kessler, Goldstein & Fox P.L.L.C.  Internal Address: c/o  Street Address:    1100 New York Ave., N.W. Suite 600  City: Washington    State: D.C.    Zip Code: 20005-3934	6. Total number of applications and patents involved: <u>13</u>  7. Total fee (37 C.F.R. § 3.41).....\$ <u>560.00</u>  <div style="display: flex; justify-content: space-between;"> <span><input checked="" type="checkbox"/> Enclosed</span> <span><input type="checkbox"/> Authorized to be charged to Deposit Account</span> </div> 8. Deposit Account Number:  19-0036  (Attach duplicate copy of this page if paying by deposit account)	
DO NOT USE THIS SPACE		
9. Statement and signature. <i>To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.</i>  <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <u>Michele A. Cimbalà</u>            Name of Person Signing            Registration No. <b>33651</b> </div> <div style="width: 30%; text-align: center;">             Signature         </div> <div style="width: 30%; text-align: right;"> <u>11/20/01</u>            Date         </div> </div>		
Total number of pages including cover sheet, attachments and document 5		
Mail documents to be recorded with required cover sheet information to: Commissioner of Patents and Trademarks, Box Assignments Washington, D.C. 20231		

## ASSIGNMENT

WHEREAS, KOMA Ltd., a company organized and existing under the laws of Bermuda (hereinafter "ASSIGNOR"), and having a registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, is the owner of the entire right, title and interest in the inventions or improvements disclosed in the patents and patent applications set out in Schedule A, and an undivided one-half interest in the inventions or improvements disclosed in the patents and patent applications set out in Schedule B,

WHEREAS, KOMA Technology Ltd., a company organized and existing under the laws of Bermuda (hereinafter "ASSIGNEE"), and having a registered office at Clarendon House, 2 Church Street, Hamilton HM11, Bermuda, desires to acquire ASSIGNOR's entire ownership interest as described above, in accordance with the Exchange Agreement duly entered into between ASSIGNOR and ASSIGNEE as of May 31, 1999;

NOW, THEREFORE, to all whom it may concern be it known that for and in consideration of the covenants of said Exchange Agreement, and of other good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNOR does hereby assign and transfer unto said ASSIGNEE, its successors, assigns, and legal representatives, ASSIGNOR's entire right, title and interest in and throughout the United States of America (U.S.), its territories and all foreign countries, including the right to sue for and collect for all past, present and future damages and infringement, in and to said inventions and improvements as described in said patents and patent applications, together with ASSIGNOR's entire right, title and interest in and to said patents and patent applications, and such patents as may issue thereon or claim priority under U.S. or international convention; said inventions, improvements, patents and patent applications to be held and enjoyed by said ASSIGNEE for its own use and behalf, and for its successors, assigns and legal representatives, to the full end of the term for which said patents may be granted as fully and entirely as the same would have been held by ASSIGNOR had this assignment and sale not been made; and ASSIGNOR hereby conveys all of ASSIGNOR's rights arising under or pursuant to any and all U.S. or international agreements, treaties or laws relating to the protection of industrial property obtained by filing any such applications for patents. ASSIGNOR hereby acknowledges that this assignment, being of ASSIGNOR's entire right, title and interest in and to said inventions and improvements, carries with it the right in ASSIGNEE to apply for and obtain from competent authorities in all countries of the world any and all patents by attorneys and agents of ASSIGNEE's selection and the right to procure the grant of all patents to ASSIGNEE for its own name as assignee of ASSIGNOR's entire right, title and interest therein.

AND, ASSIGNOR hereby further agrees for itself and its successors, assigns and legal representatives to execute upon request any other lawful documents and likewise to

perform any other lawful acts which may be deemed necessary to secure fully the aforesaid rights to said ASSIGNEE, its successors, assigns, and legal representatives, but at its or their expense and charges, including: the execution of applications for patents in the U.S. and in foreign countries; the execution of substitution, reissue, divisional or continuing applications; and preliminary or other statements or the giving of testimony in any interference or other proceeding in which said inventions and improvements or any application or patent directed thereto may be involved; and ASSIGNOR further hereby authorizes ASSIGNEE or its attorneys or agents to insert any correct serial number and filing date into this assignment, if appropriate.

AND, ASSIGNOR hereby authorizes and requests the Commissioner of Patents of the United States and the appropriate officers who have been vested with similar authority in all countries of the world to issue such patents as shall be granted upon said patent applications or other patent applications based thereon to said ASSIGNEE, its successors, assigns and legal representatives.

ASSIGNOR hereby represents that ASSIGNOR has full right and authority to convey the entire interest herein assigned, and that ASSIGNOR has not executed, and will not execute, any agreement in conflict therewith.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed and set our hands and affixed our seals the dates set forth below.

NOMA Ltd.

By: 

Name: John L. Castello

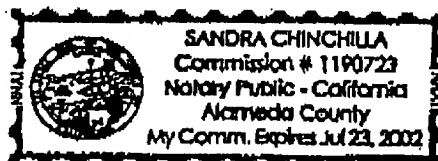
Title: Chairman of the Board,

President and

Chief Executive Officer

STATE OF California )  
COUNTY OF Alameda ) ss

Subscribed and sworn to before me, by the above-named John L. Castello  
this 22nd day of October, 1999.



  
Notary Public, Sandra Chinchilla

My Commission Expires: July 23, 2002

XOMA Technology Ltd.

By: *G. Reynolds*

Name: G. James Reynolds

Title: Director

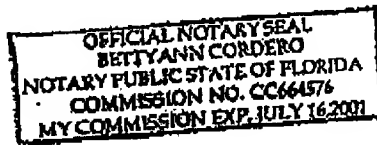
STATE OF Florida  
COUNTY OF Forward ss

Subscribed and sworn to before me, by the above-named G. James Reynolds  
this 6th day of Dec 1999.

*Bettyann Cordero*

Notary Public

My Commission Expires: 7/16/2001



00310333 10700000

**TIF-Related**

- 1) Title: Materials Comprising and Methods of Preparation and Use for Ribosome-Inactivating Proteins

Inventors: Better, Carroll, Lane

- a) Based on PCT/US92/09487 [WO 93/09130] which corresponds to U.S. Application No. 07/787,567 filed November 4, 1991.

<u>Country</u>	<u>Application No.</u>	<u>Status / Patent No.</u>
*United States	07/787,567	Abandoned
United States	07/901,707	Issued 5,376,546
United States	07/988,430	Issued 5,416,202
Canada	2,122,714	Pending
EPO	92924279.0	Pending
Japan	5-508702	Pending

- b) Based on PCT/US94/05348 [WO 94/26910] which corresponds to U.S. Application No. 08/064,691 filed May 12, 1993.

<u>Country</u>	<u>Application No.</u>	<u>Status / Patent No.</u>
*United States	08/064,691	Abandoned
United States	08/425,336	Issued 5,621,083
United States	08/488,113	Issued 5,744,580
United States	08/477,484	Issued 5,756,669
United States	08/839,765	Pending
United States	08/646,360	Issued 5,837,491
United States	09/136,389	Pending
Canada	2,162,689	Pending
EPO	94917380.1	Pending
Japan	6-525727	Pending

**Certificate Under 37 C.F.R. § 3.73(b)**Applicant/Patent Owner: XOMA Technology Ltd.Application No./Patent No.: 09/610,838Filed/Issue Date: July 6, 2000Entitled: Fusion Proteins and Polynucleotides Encoding Gelonin SequencesXOMA Technology Ltd.

(Name of Assignee)

a Corporation

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest, or
2. ☐ an assignee of an undivided part interest

in the patent application/patent identified above by virtue of either:

- A. ☐ An Assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

- B. ☒ A chain of title from the inventor(s) of the patent application/patent identified above to the current assignee as shown below:

1. From: the inventors To: XOMA Corporation

The document was recorded in the Patent and Trademark Office at Reel 9153, Frame 0378, or for which a copy thereof is attached.

2. From: XOMA Corporation To: XOMA Arizona, Inc.

The document was recorded in the Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

3. From: XOMA Arizona, Inc. To: XOMA Corporation (Arizona)

The document was recorded in the Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

☒ Additional documents in the chain of title are listed on a supplemental sheet.

☒ Copies of assignments or other documents in the chain of title are attached.

(NOTE: A separate copy (i.e., the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the PTO. See MPEP 302-302.8)

The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee.

Date: 11/20/01Name: Christopher J. MargolinTitle: Vice President, General Counsel and Secretary

Signature: \_\_\_\_\_

00910838.1270000

Appl. No. 09/610,838  
Better *et al.*

## Certificate Under 37 C.F.R. § 3.73(b) Supplemental Sheet

4. From: XOMA Corporation (Arizona) To: XOMA Ltd.  
The document was recorded in the Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.
5. From: XOMA Ltd. To: XOMA Technology Ltd.  
The document was recorded in the Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

### Certification of Facsimile Transmission

I hereby certify that this paper is being facsimile transmitted  
to the Patent and Trademark Office on the date shown below.

Michele A. Cimbalà  
Michele A. Cimbalà, Registration No. 33, 851

Date: 11/20/01

0040/01 8730T 950